

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DANIEL TOMPKINS

W7103 North Oakridge Ct.
Poynette, WI 53955

Plaintiff,

Case No: 17-cv-102

vs.

SWAT HOLDINGS, LLC

16680 W. Cleveland Ave., Ste. C
New Berlin, WI 53151

Defendant.

COMPLAINT

Plaintiff, Daniel Tompkins, by his attorneys, Hawks Quindel, S.C., for his
Complaint against Defendant, SWAT Holdings, LLC, states as follows:

PRELIMINARY STATEMENT

1. Plaintiff was employed by Defendant, Swat Holdings, LLC (“SWAT”) as a “radon mitigator” within the past three years.

2. During his employment, Plaintiff was paid a base rate per job, plus commissions, but was not paid one and one-half times his regular rate of pay for hours worked in excess of 40 hours in a workweek.

3. Plaintiff seeks payment of overtime wages, an equal amount in liquidated damages, and payment of attorney’s fees and costs in bringing this action.

PARTIES

4. Plaintiff, Daniel Tompkins, is an adult resident of Poynette, Wisconsin. Plaintiff has been employed by Defendant as a radon mitigator since 2013. Plaintiff has consented in writing to assert claims for unpaid overtime wages under the Fair Labor Standards Act (“FLSA”). His consent form is filed as Exhibit A. Plaintiff was an “employee” of Defendant within the meaning of 29 U.S.C. § 203(e)(1).

5. Defendant, SWAT Holdings, LLC, is a domestic limited liability company with its principal office at 16680 W. Cleveland Ave., Suite C, New Berlin, Wisconsin. Its Registered Agent is Todd Hansen. Defendant is an enterprise engaged in commerce within the meaning of 29 U.S.C. § 203(s)(1). Defendant is an “employer” within the meaning of 29 U.S.C. § 203(d).

JURISDICTION AND VENUE

6. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, this action being brought under the FLSA, 29 U.S.C. § 201, et seq. The Court has subject matter jurisdiction over the state law claims pursuant to 28 U.S.C. § 1367(a).

7. Venue is proper in the United States District Court for the Western District of Wisconsin because events giving rise to these claims occurred in this district.

FACTUAL ALLEGATIONS

8. Plaintiff has worked as a radon mitigator for Defendant within the past three years. On or around 2013, his company was re-named SWAT Holdings,

LLC.

9. As a radon mitigator, Plaintiff traveled to client homes and/or businesses to perform radon exposure tests and to install radon mitigation systems.

10. Each night, Plaintiff would receive his list of jobs for the following day, which he would confirm.

11. Plaintiff drove from his home to the first job site each work day and then checked in on the SWAT online application, where he would perform his assigned task and check out online before traveling to the next job site.

12. After completing his jobs for the day, Plaintiff would return to Defendant's warehouse in Poynette, Wisconsin to dispose of refuse from the day's work, gather supplies for the next day's job, stock any new materials that had been delivered, and clean up the warehouse as needed. He was not provided any additional compensation for this work.

13. At the end of the day, Plaintiff had to submit all job information electronically through the SWAT online application.

14. Throughout his employment with Defendant, Plaintiff was paid a per-job rate and sometimes earned commissions or bonuses.

15. Plaintiff typically worked in excess of 40 hours per workweek.

16. Plaintiff was suffered and permitted to work hours over 40 in a workweek for Defendant and was not provided overtime compensation.

FIRST CAUSE OF ACTION:
FAILURE TO PAY OVERTIME WAGES
IN VIOLATION OF THE FLSA

17. Plaintiff re-alleges and incorporates the preceding paragraphs as though set forth here in full.

18. The FLSA, 29 U.S.C. § 207, requires each covered employer to compensate all non-exempt employees at a rate of one and one-half times the regular rate of pay for work performed in excess of 40 hours per workweek.

19. During his employment with Defendant, Plaintiff's job duties were not those of a bona fide administrative, executive, or professional employee.

20. During his employment with Defendant, Plaintiff was suffered and permitted to work hours over 40 in a workweek for Defendant without overtime compensation.

21. Defendant's practices violate the provisions of the FLSA, including, but not limited to, 29 U.S.C. § 207. As a result of these unlawful practices, Plaintiff has suffered a wage loss.

22. Defendant knew or showed reckless disregard for the fact that it failed to pay Plaintiff overtime wages in violation of the FLSA.

23. Plaintiff seeks damages in the amount of twice the unpaid overtime wages earned during his employment as well as attorney's fees and costs in bringing this action pursuant to 29 U.S.C. § 216(b).

SECOND CAUSE OF ACTION:
FAILURE TO PAY REGULAR AND OVERTIME WAGES
IN VIOLATION OF WISCONSIN LAW

24. Plaintiff re-alleges and incorporates the preceding paragraphs as though set forth here in full.

25. The foregoing conduct, as alleged, violates Wis. Stats. §§ 103.03, 109.03, and Wis. Admin. Code § DWD 274.03.

26. Wis. Stat. § 103.02 and Wis. Admin. Code § DWD 274.03 require an employer to pay overtime compensation to all non-exempt employees.

27. Wis. Stat. § 109.03 requires payment of all wages earned by the employee on a day not more than 31 days prior to the date of payment.

28. During his employment with Defendant, Plaintiff's job duties were not those of a bona fide administrative, executive, or professional employee.

29. During his employment with Defendant, Plaintiff was suffered and permitted to work hours over 40 in a workweek for Defendant without overtime compensation.

30. During his employment with Defendant, Plaintiff was suffered and permitted to work hours without receiving any compensation, including, but not limited to, time spent traveling between job sites and performing tasks at Defendant's warehouse.

31. As a result of Defendant's willful failure to pay overtime wages earned and due to Plaintiff, it has violated Wis. Stats. §§ 103.03, 109.03, and Wis. Admin. Code § DWD 274.03.

32. Plaintiff seeks damages in the amount of the unpaid wages earned and due as provided by Wis. Stats. §§ 103.03, 109.03, and Wis. Admin. Code § DWD 274.03, recovery of attorney's fees, costs, and expenses of this action to be paid by Defendant as provided by Wis. Stat. § 109.03(6), and any penalties due under Wis. Stat. § 109.11, as well as such other legal and equitable relief from Defendant's unlawful and willful conduct as the Court deems just and proper.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff demands judgment against Defendant, awarding him:

A. The overtime compensation owed to Plaintiff under 29 U.S.C. § 207 for the three-year time period prior to the commencement of this action;

B. The overtime wage compensation owed to Plaintiff under Wis. Stats. §§ 103.03 and 109.03 for the two-year time period prior to the commencement of this action;

C. Liquidated damages in an amount equal to the amount awarded to him as overtime wage compensation as provided in 29 U.S.C. § 216(b);

D. Penalties due under Wis. Stat. § 109.11;

E. All attorney's fees incurred by Plaintiff in prosecuting this action and the costs of this action, as provided in 29 U.S.C. § 216(b) and Wis. Stat. § 109.03(6); and

F. Such other legal or equitable relief as this Court deems just and necessary to vindicate Plaintiff's rights under Wisconsin law and the FLSA.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff
demands a trial by jury.

Dated: February 9, 2017.

HAWKS QUINDEL, S.C.
Attorneys for the Plaintiff

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